



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>**

September 19, 2003

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James H. Reid
Petro-Chemical Transport, Inc.
143 West Franklin Street
Chapel Hill, NC 27516-2539

Re: In the Matter of: Kenan Transport Company and Petro-Chemical Transport, Inc., Docket No. CWA-08-2003-0095
Administrative Complaint and Notice of Opportunity
for Hearing

Dear Mr. Reid:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Kenan Transport Company and Petro-Chemical Transport, Inc., pursuant to its authority under Section 311(b)(6)(B)(ii) of the Clean Water Act, (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(ii). EPA alleges in the Complaint that the discharge of approximately 2,718 gallons (65 barrels) of unleaded gasoline from a tanker into Mine Dump Creek, a tributary of Clear Creek and the South Platte near mile marker 227, Clear Creek County, Colorado on January 8, 2002, constitutes a violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3) of the Act. The Complaint proposes that a penalty of \$82,500.00 be assessed against Kenan Transport Company and Petro-Chemical Transport, Inc., for the alleged violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300



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Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 CFR § 22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your answer and/or requesting a hearing. Public Notice of, and reasonable opportunity to comment on, the proposed issuance of an order assessing a class II civil penalty is being provided pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C). If no hearing is held under section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(iii).

If you have any questions, the most knowledgeable people on my staff regarding this matter are Brenda Morris and Donna Inman. Ms. Morris is in our Legal Enforcement Program and can be reached at (303) 312-6891. Ms. Inman is in our Technical Enforcement Program, and can be reached at (303) 312-6201.

Sincerely,

A. M. Gaydosh for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Public Notice
Notice of SEC Disclosure

cc: Patricia C. Martinek, Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2003-0095
)	
Kenan Transport Company)	ADMINISTRATIVE COMPLAINT AND
and)	OPPORTUNITY TO REQUEST HEARING
Petro-Chemical Transport, Inc.)	
)	Proceeding to Assess Class II
)	Civil Penalty Under Section
)	311 of the Clean Water Act
<u>Respondents.</u>)	for Spill Violation

STATUTORY AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the undersigned EPA official.
- (b) Pursuant to section 311(b)(6)(B)(ii) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits “ codified at 40 CFR part 22, (enclosed), Complainant hereby provides notice of its proposal to assess a civil penalty against Kenan Transport Company and Petro-Chemical Transport, Inc. (“Respondents”) for the discharge of oil (unleaded gasoline) into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful, in violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3), and notice of Respondents’ opportunity to file an answer to this Complaint and to request a hearing on the proposed penalty

assessment.

ALLEGATIONS

- (c) Respondent, Kenan Transport Company, is a corporation organized under the laws of North Carolina, and the parent company of Respondent, Petro-Chemical Transport, Inc., a Texas corporation authorized to do business in the State of Colorado.
- (d) Respondents are “person(s)” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.
- (e) Respondents are the owner(s) and/or operator(s) of the tanker truck (an onshore facility within the meaning of section 311(a)(6) and (10) of the Act, 33 U.S.C. §1321(a)(6) and (10), and 40 CFR §112.2, hereinafter, “the facility”) that was involved in a single-vehicle traffic accident that occurred near mile marker 227 on US Highway 6, approximately 2 miles south of the Interstate 70 and US Highway 6 interchange near Loveland Pass, Clear Creek County, Colorado, on January 8, 2002.
- (f) Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
- (g) For purposes of sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters or adjoining shorelines of the United States, in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are defined in 40 CFR §110.3 to include discharges of oil that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining

shorelines.

- (h) On January 8, 2002, Respondents' facility discharged 2,718 gallons or approximately 65 barrels of oil (unleaded gasoline) as defined in section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from their facility into or upon a stream which is locally known as Mine Dump Creek, and is an unnamed tributary of Clear Creek, a tributary to the South Platte, and adjoining shorelines.
- (i) Mine Dump Creek is a navigable water of the United States as defined in section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.
- (j) Respondents' January 8, 2002 discharge of 2,718 gallons of unleaded gasoline from its facility impacted approximately 1,650 linear feet of Mine Dump Creek and shut down the Loveland Valley Ski Area water treatment plant and associated underground storage tanks and water reservoir.
- (k) Respondents' January 8, 2002 discharge of 2,718 gallons of unleaded gasoline from its facility caused a violation of Colorado water quality standards and caused a film or sheen upon or discoloration of the surface of Mine Dump Creek and its adjoining shorelines and caused a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines, and therefore, was in a quantity that has been determined may be harmful under 40 CFR §110.3, in violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).
- (l) As alleged in the preceding Paragraph, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR §19.4, the Respondents are liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$137,500 for all violations.

PROPOSED PENALTY

Based on the foregoing allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 CFR §19.4, the Complainant proposes that the Administrator issue a Final Order assessing administrative penalties against the Respondents in an amount of \$82,500.00. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. Specifically, the proposed penalty is based on the seriousness of Respondents' discharge with major environmental impact which resulted in shutting down the Loveland Valley Ski Area water treatment plant, necessitating an alternate drinking water source, and contaminating the treatment plant, the associated underground storage tanks, and the water reservoir. Culpability of the Respondents is deemed to be major in that the police report noted that weather was not a factor, the vehicle was not defective, and the Respondents admitted that the driver of the tanker truck lost control of the vehicle.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondents do not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no answer need be filed. For more time for payment, Respondents may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt.

Payment is to be made by sending a cashier's or certified check **payable to "Oil Spill Liability Trust Fund"**, with the docket number and name of the facility written on the check, to:

Jane Nakad (8ENF-T)
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, Respondents have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer plus one copy in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation. The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300

Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Brenda Morris, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE TIME LIMITS, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

PUBLIC NOTICE

Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations, and is willing to explore this possibility in an informal settlement conference. If you, or your attorney if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Brenda Morris at (303) 312-6891. Please note that a request for, scheduling of,

or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

By: 9/19/03 A. M. Gaydosh for/
CAROL RUSHIN
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Corporation Service Company
Registered Agent for Kenan Transport Company
327 Hillsborough St.
Raleigh, North Carolina 27601

and

CT Corporation systems
Registered Agent for Petro-Chemical Transport, Inc.
1675 Broadway
Denver, Colorado 80202

9/22/03
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 22, 2003.